

GAHC010202112019



2024:GAU-AS:11919

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6268/2019

RAJSHEKHAR SAHA AND 2 ORS.

S/O- LATE SWAPAN SAHA, R/O- CENTRAL ROAD, WARD NO.6, SILCHAR-,
DIST- CACHAR, ASSAM

2: GOURI SAHA

W/O- LATE SWAPAN SAHA

R/O- CENTRAL ROAD

WARD NO.6

SILCHAR-

DIST- CACHAR

ASSAM

3: BARSHA SAHA

D/O- LATE SWAPAN SAHA AND W/O- SRI PRASENJIT ROY

R/O- MISSION ROAD

OPP ROY BIBAH BHAWAN

ROY PARA

KALAHBHANGA

BARPETA ROAD

DIST- BARPETA

ASSA

VERSUS

THE STATE OF ASSAM AND 7 ORS

REP. BY THE COMMISSIONER AND SECRETARY, DEPTT OF TOWN AND
COUNTRY PLANNING, DISPUR, GHY- 6

2:SILCHAR MUNICIPAL BOARD

REP. BY ITS CHAIRMAN

SILCHAR- 01

3:THE CHAIRMAN

SILCHAR MUNICIPAL BOARD

SILCHAR

4:SILCHAR DEVELOPMENT AUTHORITY
REP. BY ITS CHAIRMAN
SILCHAR- 1

5:THE CHAIRMAN
SILCHAR DEVELOPMENT AUTHORITY
SILCHAR

6:NIHARENDRA NARAYAN TAGORE
CHAIRMAN
SILCHAR MUNICIPAL BOARD
R/O- VIVEKANANDA ROAD
WARD NO. 25
SILCHAR- 788007

7:DEBOJYOTI SWAMI
S/O- LATE DILIP SWAMI
R/O- WARD NO. 6
CENTRAL ROAD
SILCHAR- 01

8:DEBASISH SWAMI
S/O- LATE DILIP SWAMI
R/O- WARD NO. 6
CENTRAL ROAD
SILCHAR- 0

Advocate for the Petitioner : Mr. T. J. Mahanta, Sr. Advocate
Mr. R. Chakravorty, Advocate

Advocate for the Respondents: Mr. S. Dutta, Sr. Advocate
Mr. G. N. Sahewalla, Sr. Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 29.11.2024

Date of Judgment : 29.11.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. T. J. Mahanta, the learned senior counsel assisted by Mr. R. Chakravorty, the learned counsel for the petitioners. Mr. S. Dutta, the learned senior counsel appears on behalf of the respondent Nos.2, 3, 4 & 5 and Mr. G. N. Sahewalla, the learned senior counsel appears on behalf of the respondent Nos.7 & 8.

2. It is seen that both the petitioners as well as the respondent Nos.7 & 8 have filed complaints before the Chairman of the Silchar Municipal Board as regards certain violations to the building constructed by them. The records further reveal that the Deputy Director, Town and Country Planning, Silchar had also opined in a report dated 15.07.2013 that the respondent Nos.7 & 8 while constructing the building have exceeded the maximum coverage of the commercial building from 80% to 91%. It was also found that the maximum allowable FAR (floor area ratio) was 320, but the floor area ratio of the commercial building of the respondent Nos.7 & 8 was 558.03 which was against the norms.

3. It is also seen from the records that on the basis of those complaints so filed, an order was passed on 02.01.2014 by the Chairman of the Silchar Municipal Board which was the subject matter of WP(C) No.198/2014. In this writ petition, the Respondent Nos.7 & 8 herein were the Respondent Nos.6 & 7. In addition to that, there was also another order of the Chairman, Silchar Development Authority as well as the Appellate Authority dated 08.12.2008 and 02.08.2010 respectively which were subject matter of another writ petition being WP(C) No.4651/2010.

4. Both the writ petitions were disposed of by this Court vide the order dated 30.08.2017 whereby the Coordinate Bench of this Court observed that as the core issue was as to whether there was any violation of the building laws by the respondent Nos.7 & 8 herein, it would be better that the matter be remanded back for fresh consideration by the Chairman, Silchar Municipal Board of the complaint raised by the writ petitioners herein. It was further mentioned that the Chairman of the Silchar Municipal Board shall give an opportunity of hearing to both the petitioners as well as the respondent Nos.7 & 8 herein and allow them to produce all relevant materials that they may desire to produce. Paragraph Nos.11 to 15 of the said judgment and order being relevant is reproduced herein under:-

“11. In such view of the matter, as the core issue as to whether there is any violation of building laws by the respondent Nos. 6 and 7 had not been decided, this Court deems it appropriate that the matter be remanded back for a fresh consideration by the Chairman, Silchar Municipal Board of the complaint raised by the writ petitioner. While doing so, the Chairman, Silchar Municipal Board shall give an opportunity of hearing to both the petitioner as well as to the respondent Nos. 6 and 7 and allow them to produce all relevant materials that they may desire to produce.

12. Upon undertaking such exercise, a speaking order be passed by the Chairman, Silchar Municipal Board, either accepting or rejecting the complaint of the petitioner that there has been violation of the building bye-laws by the respondent Nos. 6 and 7. The Chairman, Silchar Municipal Board may also pass any other order as may be permissible under the law in this respect. But, however, for any such order, the reasons thereof be also stated.

13. As regards the other order dated 08.12.2008 of the Chairman, Silchar Development Authority as well as the appellate order dated 04.08.2010, the same be also given a reconsideration by the Chairman, Silchar Municipal Board inasmuch as, as stated by Mr. T. J. Mahanta, learned senior counsel for the petitioner that presently the Chairman, Silchar Municipal Board would be the appropriate authority to decide the same.

14. Accordingly, it is directed that the Chairman, Silchar Municipal Board shall give a due consideration to the complaint filed by the petitioner against the respondent Nos. 6 and 7 as well as the complaint filed by the respondent Nos. 6 and 7 against the petitioner and as indicated above, pass an appropriate order thereon.

15. The aforesaid exercise be carried out within a period of three months from the date of receipt of a certified copy of this judgment and order. In terms of the above, the writ petition stands disposed of.”

5. The record further reveals that pursuant thereto, an order was passed on 03.05.2019 by the Chairman, Silchar Municipal Board under Memo No.MP/BP/V/06/2019-20/1457-1458 dated 06.06.2019. From a perusal of the said order, it reveals that as in the earlier order dated 02.01.2014, there was a mention that the construction was made by the respondent Nos.6 & 7 as per the construction permission, the objection submitted by the petitioners was rejected. It was opined that there was no case made out to review the order passed by the earlier Chairman, Silchar Municipal Board. It was further observed by the Chairman, Silchar Municipal Board that there was no scope to reopen the episode at least by him and the complainants, i.e. the petitioners herein were given the liberty to approach the appropriate higher

authority. The order dated 30.05.2019 under Memo No.MP/BP/V/06/2019-20/1457-1458 dated 06.06.2019 has been put to challenge before this Court.

6. Mr. T. J. Mahanta, the learned senior counsel appearing on behalf of the petitioners submitted that the perusal of paragraph Nos.11 to 15 of the judgment and order dated 30.08.2017 passed in WP(C) No.198/2014 and WP(C) No.4651/2010 categorically mentioned that there was a requirement for a fresh consideration and the matter was remanded back. The learned senior counsel for the petitioners submitted that it is a well settled principle of law that when the matter is remanded back, it amounts to setting aside the order which is the subject matter before the Court, and therefore, there is a requirement for a fresh decision in the matter. The learned senior counsel for the petitioners therefore submitted that the Chairman, Silchar Municipal Board not only abdicated his duty imposed upon him by the Assam Municipal Act, 1956 but also the specific directions passed by this Court in the judgment and order dated 30.08.2017, and as such, there is a requirement for an interference.

7. It is observed herein that this Court had issued notice on 09.09.2019. The Silchar Municipal Board as well as the private respondent Nos.7 & 8 herein have duly appeared before this Court in connection with the instant proceedings as on 16.12.2020. Even after a lapse of around 4 years, no affidavit has been filed to contest the case of the petitioners.

8. This Court had duly heard the learned counsels for the parties at length and given its anxious consideration. The observations made in the above

quoted paragraph Nos. 11 to 15 of the judgment and order dated 30.08.2017 passed by the Coordinate Bench of this Court, apparently shows that the order dated 02.01.2014 was interfered with and there was a specific direction for fresh consideration after giving due opportunity of hearing to both the parties. However, a perusal of the impugned order dated 30.05.2019 by the Chairman, Silchar Municipal Board which was under Memo No.MP/BP/V/06/2019-20/1457-1458 dated 06.06.2019 shows that the directions contained in the judgment and order dated 30.05.2019 was not adhered to. It shocks and surprises this Court in the manner in which the impugned order was passed. The directions passed in the judgment and order dated 30.05.2019 was clear and unambiguous. Under such circumstances, either it may be a case of lack of understanding or for reasons other than bonafide. This Court would presume that the impugned order is a result of lack of understanding and non-application of mind for which the same is liable to be set aside and quashed.

9. In view of the above, the Chairman, Silchar Municipal Board is required to decide the complaint so filed by the respondent Nos.7 & 8 herein against the petitioners as well as the complaint so filed by the petitioners against the respondent No.7 & 8 herein afresh without being influenced by the observations so made in the earlier order dated 02.12.2014 passed by the Chairman, Silchar Municipal Board.

10. This Court further finds it relevant that in view of the setting aside of the order dated 30.05.2019 of the Chairman, Silchar Municipal Board, certain directions are required to be issued so that there is absolute clarity to what the

Chairman/Executive Officer, Silchar Municipal Board is required to do. Accordingly, the instant writ petition stands disposed of with the following observations and directions:-

- (i) The order dated 30.05.2019 passed by the Chairman, Silchar Municipal Board under Memo No. MP/BP/V/06/2019-20 /1457-1458 dated 06.06.2019 is set aside and quashed.
- (ii) The Chairman, Silchar Municipal Board and in absence of the Chairman, the Executive Officer so appointed under Section 53 of the Assam Municipal Act, 1956 is directed to decide the complaint filed by the petitioners against the respondent Nos.7 & 8 as well as the complaint filed by the respondent Nos.7 & 8 against the petitioners without being influenced by the order dated 02.01.2014 passed by the Chairman, Silchar Municipal Board as well as the impugned order dated 30.05.2019 passed by the Chairman, Silchar Municipal Board.
- (iii) The Chairman, Silchar Municipal Board/the Executive Officer, Silchar Municipal Board is further directed to decide those complaints in accordance with the provisions of the Assam Municipal Act, 1956 as well as the provisions of the Assam Notified Areas (Other than Guwahati) Building Rules, 2014. The said adjudication be made by the Chairman, Silchar Municipal Board/the Executive Officer, Silchar Municipal Board within a period of 30 days from the date of submission of a certified copy of the instant judgment and order to the Chairman, Silchar Municipal Board/the Executive Officer, Silchar

Municipal Board. While doing so, the petitioners as well as the respondent Nos.7 & 8 be given an opportunity of hearing.

(iv) This Court further directs both the petitioners as well as the Respondent Nos.7 & 8 to appear before the Chairman/Executive Officer, Silchar Municipal Board on 06.12.2024. On that date, the date of hearing be fixed by the Chairman/Executive Officer, Silchar Municipal Board.

(v) Upon passing of the said order, i.e. the Chairman, Silchar Municipal Board/the Executive Officer, Silchar Municipal Board is further directed to file an affidavit of compliance before the Registry of this Court enclosing the order so passed in pursuance to the above mentioned directions. It is further directed that the time frame so directed be complied with.

JUDGE

Comparing Assistant